

# Committee on Standing Orders

## CSO(2)-07-06 (p7)

**Date: 3 July 2006**

**Venue: National Assembly for Wales, Cardiff Bay**

**Title: Standing Order 23 – Complaints**

### 1. Purpose

1.1 This paper considers the implications for Standing Order 23 arising from the Government of Wales Bill.

### 2. Background

Government of Wales Act 1998

2.1 Section 70 (5) of the Government of Wales Act 1998 requires that the Standing Orders must include provision for establishing procedures for the investigation of complaints about actions or failures on the part of the Assembly and for publishing details of those procedures. Standing Order 23 discharges this obligation.

Public Services Ombudsman (Wales) Act 2005

2.2 The Public Services Ombudsman (Wales) Act 2005 established the office of the Public Services Ombudsman for Wales (from 1 April 2006). A short briefing note on the 2005 Act is attached at Annex 1.

2.3 Following a report prepared by the Business Committee, it was agreed in Plenary on 9 May 2006 to amend Standing Order 23:

- a. to make transitional provision for the consideration of reports by the Public Services Ombudsman that concern events that occurred solely before 1 April 2006 and were the subject of an appropriate complaint.
- b. to meet the statutory obligation under section 24(3) of the 2005 Act, to make specific provision in Standing Orders in respect of special reports issued by the Ombudsman that relate to the Assembly.

2.4 Changes to Standing Order 23 did not cover additional provisions that could be included to cover consideration of the Ombudsman's annual report and the consideration / handling of the reports of individual investigations.

## Committee on the Better Governance for Wales White Paper

### 2.5 The Committee on the Better Governance for Wales White Paper commented as follows on Ombudsmen

#### Maladministration

134 The system of Ombudsmen is closely associated in the United

Kingdom with Legislatures. The United Kingdom Ombudsman's

proper title is the "Parliamentary Commissioner for Administration";

under section 91 of the Scotland Act, it is for the Scottish Parliament to

make provision for complaints about maladministration; and in

Northern Ireland, the Northern Ireland Commissioner for Complaints

reports annually to the Assembly. This is because Ombudsmen and

elected representatives share a special responsibility for protecting the

public against maladministration. Under the Public Services

Ombudsman (Wales) Act 2005, the Ombudsman is appointed by Her

Majesty on the recommendation of the Secretary of State, after

consultation with the Assembly. The Ombudsman's reports are made

(among others) to the First Minister. The White Paper says that the

Ombudsman will in future be appointed by Her Majesty on the

Assembly's recommendation because of the Government's belief that

the appointment "should be seen to be entirely independent of

executive authority in Wales".<sup>266</sup> We welcome this, but we also believe

that he or she should also be required to report to the Assembly

annually, and be entitled to make special reports from time to time.

We recommend that the Bill be used as an opportunity to forge  
closer links between the Ombudsman and the Assembly.

<sup>266</sup> para 2.19

## Government of Wales Bill

2.6 The Government of Wales Bill includes no equivalent provision to section 70(5) of the 1998 Act.

2.7 Clause 123 specifies the Ombudsman as a body that can charge directly on the Consolidated Fund i.e. funding comes directly from the Fund, so providing financial independence from the Welsh Assembly Government or the National Assembly.

2.8 Paragraphs 66 to 87 of Schedule 10 to the Bill make transitional and consequential amendments to the 2005 Act. Key changes include:

- a. replacing "Assembly" with "Welsh Ministers", "Welsh Assembly Government", "National Assembly for Wales Commission" etc as appropriate, reflecting the move away from the Assembly's corporate body status;
- b. the specification of affirmative subordinate legislation procedures for the making of Orders by Welsh Ministers that propose to amend section 25 (Consultation and co-operation with other ombudsmen) and Schedules 2 (Excluded Matters) and 3 (Listed authorities) of the 2005 Act;
- c. appointments to the office of Ombudsman (or to the position of Acting Ombudsman) being on the nomination of the Assembly;
- d. a recommendation for removal of a person from the office of Ombudsman requiring a resolution of the Assembly passed with at least 40 Members voting in favour.
- e. a requirement that the Ombudsman shall submit estimates of income and expenses required to a named Committee specified in Standing Orders.

2.9 Schedule 10 was considered by the Committee on the Government of Wales Bill at its meeting of the 14 February 2006. An amendment was tabled to make the Ombudsman an officer of the Assembly. In response, the Assembly Government stated the independence of the Ombudsman's role was clear and that it is a Crown appointment independent of the Assembly Government. The amendment was withdrawn. Amendments were also proposed in relation to Ombudsman reports but were not supported by the Assembly Government.

## House of Commons / Scottish Parliament

2.10 In the House of Commons, the Parliamentary Commissioner for Administration is an officer of the House and has a special relationship with the Public Administration Committee. Under section 91 of the Scotland Act 1998, the Scottish Parliament must make provision for the investigation of complaints made to MSPs about maladministration in the Scottish Executive (and other public

bodies). Under the Bill, the Assembly and its Members are not given this role (i.e. receiving complaints and Ombudsman reports) in relation to complaints about Welsh Assembly Government maladministration.

### **3. Consideration**

3.1 Annex 2 shows the current Standing Order 23 and identifies aspects that require changing. Principally, the changes arise as a consequence of the Assembly moving away from its corporate status; the revised Standing Order will essentially cover those aspects that are statutory obligations arising from the 2005 Act and the relationship that Members consider the Ombudsman should have with the Assembly e.g. how he / she should engage with committees. The drafting of the revised Standing Order will require careful and detailed consideration, so at this stage Members are asked to consider the principles to be followed.

Q1. How should the Ombudsman engage with the Assembly and is it appropriate to reflect suitable mechanisms in Standing Orders? For example, what role should committees have in considering Ombudsman reports? Should there be a separate committee or a nominated committee (e.g. the Audit Committee) that monitors the work of the Ombudsman?

3.2 The 2005 Act is being amended by the Bill such that appointments to the office of Ombudsman will be made on the nomination of the Assembly (see paragraphs 2.8(c) and paragraph 2.8(d)). We do not consider it necessary for the procedure for nomination to be included in Standing Orders.

Q2. Do Members agree?

3.3 The requirement that the Ombudsman shall submit estimates of income and expenses required to a named Committee specified in Standing Orders (see paragraph 2.8(e)) will be considered when Members consider

issues relating to finance and committee structure.

3.4 Some of the more specific issues to be considered are identified in Annex 2 and Members are asked to consider these.

### **4. Action**

4.1 Members are invited to

- consider questions 1 and 2 above
- consider the questions in Annex 2

Government of Wales Bill Procedures Unit

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